

Case 1:19-cv-00000

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NOV 28 2007
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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

HUSAM A. HASAN

A # 037 381 740

Plaintiff,

1

MICHAEL CHERTOFF, Secretary of U.S. Department of Homeland Security; PAUL CLEMENT, U.S. Attorney General; EMILIO T. GONZALES, Director, United States Citizenship and Immigration Services; RUTH DOROCHOFF, District Director, Chicago, Illinois, Citizenship & Immigration Service; F. GERARD HEINAUER, Acting Director, Nebraska Service Center; ROBERT S. MUELLER III, Federal Bureau of Investigation; and The United States of America.

Defendants.

**07CV6683
JUDGE GUZMAN
MAG. JUDGE SCHENKIER**

**COMPLAINT FOR MANDAMUS AND
OR HEARING ON NATURALIZATION APPLICATION**

NOW COMES the Plaintiff, Husam A. Hasan by and through his attorneys, Mosa A. Elmosa., and respectfully petitions this Court for a hearing on his Naturalization Application, and in support thereof, states as follows:

STATEMENT OF ACTION

1. This action is brought to compel action pursuant to 8 U.S.C. §1446 & 1447 (Sections 335 and 336 of the Immigration & Nationality Act) on an Application for Naturalization ("N-400") properly filed with the United States Citizenship and Immigration Services ("USCIS") by Husam A. Hasan in accordance with the requirements of 8 U.S.C. §1445 (Section 334 of the Immigration & Nationality Act). Defendants' unreasonable delay in adjudicating the application has worked to the detriment of the Plaintiff.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 8 U.S.C. §1447(b) and Immigration and Nationality Act ("INA" or "the Act") Section 336(b). These provisions specifically provide for judicial review when the USCIS fails to make a decision on a naturalization application within 120 days after examination. This Court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. §1331; 28 U.S.C. §1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §2201-2202.

3. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States. Pursuant to the Administrative Procedures Act, 5 U.S.C. §701 et seq., this Court has jurisdiction to hear actions arising from claims that an agency, officer, or employee of a government agency failed to act in its, his, or her official capacity and the person to whom the duty was owed suffered a legal wrong.

4. This action invokes the Plaintiff's right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction. This action is brought due to the failure of the Defendants to perform their duty to adjudicate the Plaintiff's N-400 Application for Naturalization under Section 334 of the Act within a reasonable amount of time. Failure to adjudicate said application has resulted in harm to the Plaintiff.

5. Venus is proper in the Northern District of Illinois because Plaintiff resides in the Northern District of Illinois, a substantial part of the activities complained of occurred in the Northern District of Illinois, and Defendant, USCIS, is located in this judicial district. See 28 U.S.C. §1331(e).

6. This Court also has jurisdiction to award Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412, for failure of the Defendants to perform their duties within the statutory time period.

PARTIES

7. Plaintiff is a native and citizen of West Bank, who has been a Lawful Permanent Resident since April 23rd 1982. See Exhibit A. He has continuously resided in the United States, has satisfied the residence requirements for naturalization, has been a person of good moral character, and has demonstrated and passed all requirements (knowledge of the English language, U.S. government and history) required by INA §316, 8 U.S.C. §1427.

8. Defendant MICHAEL CHERTOFF ("Chertoff"), the Secretary for the Department of Homeland Security ("DHS"), is being sued in his official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant Chertoff, through his delegates, has authority to adjudicate naturalization applications filed with the United States Citizenship and Immigration Services (USCIS) to accord applicants citizenship under the provisions of §335 of the INA, 8 U.S.C. §1446.

9. Defendant PAUL CLEMENT ("Clement"), the Attorney General of the United States, is being sued in his official capacity only. Clement is authorized to promulgate regulations governing the implementation and administration of the Immigration and Nationality Act pertaining to the naturalization of legal resident aliens and other qualified aliens.

10. Defendant EMILIO T. GONZALES, the Director of the United States Citizenship and Immigration Services, is being sued in his official capacity only. His Under Secretary position within the Department of Homeland Security charges him with supervisory authority over federal and contract employees who are responsible for the processing of immigration benefits.

11. Defendant RUTH DOROCHOFF ("Dorochoff"), the District Director of Chicago USCIS, is being sued in her official capacity only. Dorochoff is charged with supervisory authority over all of Chicago USCIS operations and USCIS agents and officers acting in their official capacity.

12. Defendant F. GERARD HEINAUER ("Heinauer"), the Acting Director of the USCIS Nebraska Service Center, is being sued in his official capacity only. Heinauer is charged with supervisory authority over all of the Nebraska USCIS operations where the Plaintiff's application is currently pending.

13. Defendant ROBERT S. MUELLER, III ("Mueller"), the Director of the Federal Bureau of Investigation (hereinafter "FBI"), is being sued in his official capacity only. Mueller is charged with supervisory authority over all of FBI operations and FBI agents and officers acting in their official capacity.

EXHAUSTION OF REMEDIES

14. Plaintiffs have exhausted all administrative remedies. Plaintiffs, through their attorney, have made numerous inquiries concerning the status of the application and the application remains unadjudicated.

CAUSE OF ACTION

15. Plaintiff filed Form N-400, Application for Naturalization with the USCIS on or about October 20th 2004, pursuant to §334 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 8 U.S.C. §1445. See Exhibit B.

16. Plaintiff followed the appropriate procedures for the naturalization process.

17. On March 28th 2005, Plaintiff appeared for his Naturalization Interview conducted by USCIS Officer Stathos. See Exhibit C. At his scheduled interview, Plaintiff passed the test of English and U.S. History and Government, yet was told no decision could be made on his application until he followed the instructions on Form N-14 which he did. See Exhibit D.

18. There has not yet been a decision on Plaintiff's N-400 Application, despite the fact that it has been pending since October 20th 2004, approvable since March 28th 2005, and throughout

that time numerous inquiries have been made with the USCIS.

19. INA Section 336 (b), 8 U.S.C.S. §1447(b) states in pertinent part:

(b) If there is a failure to make a determination under [INA] §335 [8 U.S.C. §1446] before the end of the 120 day period after the date on which the examination is conducted under such Section, the applicant may apply to the United States District Court for the District in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions to the Service to determine the matter. (emphasis added).

20. The majority of courts to consider the issue have determined that the “examination” referred to in 8 U.S.C.S. §1447(b) is the initial naturalization interview. See U.S. v. Hovespian, 359 F.3d 1144, 1151 (9th Cir. 2004); See also, Castracani v. Chertoff, 377 F. Supp. 2d 71 (D.C.D.C. 2005); Angel v. Ridge, 2005 U.S. Dist. LEXIS 10667 (S.D. Ill. 2005); Daour v. Chertoff, 2005 U.S. Dist. LEXIS 18325 (W.D. Pa. 2005).

21. Further, jurisdictions to recently consider the issue were so disturbed by the lack of good cause in the length of the delay that they ordered DHS to administer the oath by a certain date. See Vladimirovna v. Gonzales, 2007 U.S. Dist. LEXIS 28993 (N.D. Cal. 2005) (ordering Chertoff or his designated officer to administer the oath after the termination of a sixty day stay on the order); Al Salah, et al. v. USCIS Detroit, 2007 WL 925693 (E.D. Mich. 2007) (directing the CIS to render its decision within 120 days of the order); Hassan v. Chertoff, No. 07-142-RGK (C.D. Cal. May 4, 2007) (directing CIS to render a decision by the end of September 2007); Al Mohammed v. USCIS, 2007 U.S. Dist. LEXIS 49174 (E.D. Mich. 2007) (directing CIS to render its decision within 120 days of the order); Jones v. Gonzales, 2007 U.S. Dist. LEXIS 45012 (S.D. Fla. June 21, 2007) (stating that “no agency responsible for resolving matters of public interest should be free to let those matters pend in perpetuity”); Naos v. Swacina, No. 07-20724 (S.D. Fla. June 27, 2007) (ordering USCIS to adjudicate Plaintiff’s application within 120 days); Al-Farisi v. Mueller, 2007 U.S. Dist. LEXIS 43273 (S.D.N.Y. June 14, 2007) (ordering: (1) the FBI to report the results of the Plaintiff’s name check within thirty days of the order; (2) USCIS to adjudicate the petition within thirty days of receiving the FBI’s report; and (3) to swear Plaintiff in within thirty days thereafter).

22. That pursuant to §336, 8 U.S.C. §1447, Defendant Ruth Dorochoff was required to make a determination on Plaintiff’s application for naturalization within 120 days following examination. That said period has long since expired.

23. Defendant’s refusal to act in this case is arbitrary and not in accordance with the law. Defendants have willfully and unreasonably delayed the adjudication of and withheld a decision on Plaintiff’s application. The Defendant’s delay in the processing of Plaintiff’s application has further deprived him of the right to due process under the law as provided by the Fifth Amendment of the United States Constitution.

PRAYER

WHEREFORE, Plaintiff prays that this court grant him the relief:

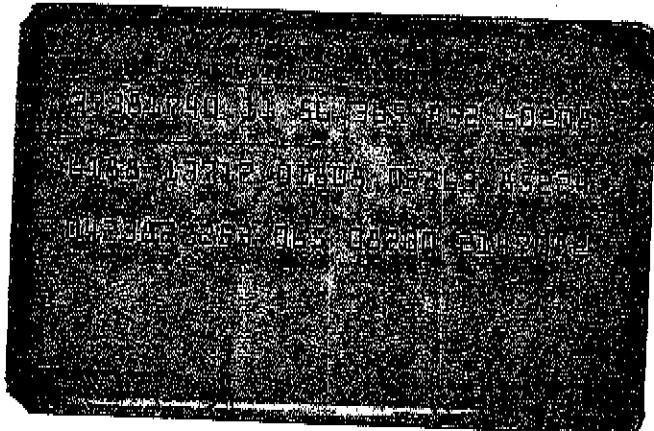
- A. Assume jurisdiction over the case and naturalize the Plaintiff under the terms of 8 USC 1447(b).
- B. Grant him citizenship pursuant to his application for naturalization, or, alternatively, order Defendants to adjudicate Plaintiff's application within 60 days;
- C. Award Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412, for failure of the Defendant's to perform their duties within the statutory time period; and
- D. Such other relief at law and in equity as justice may so require.

Respectfully submitted,

By: 
Mosa A. Elmosa
Attorney for Plaintiff
Elmosa & Associates
7265 W. 87th St.
Bridgeview, Illinois 60455
708-430-8706

Exhibit "A"





- *Please save this notice for your records. Please enclose a copy if you have to write us or a U. S. Consulate about this case, or if you file another application based on this decision.*
- *You will be notified separately about any other applications or petitions you have filed.*

Additional Information

GENERAL.

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

INQUIRIES.

You should contact the office listed on the reverse side of this notice if you have questions about the notice, or questions about the status of your application or petition. *We recommend you call.* However, if you write us, please enclose a copy of this notice with your letter.

APPROVAL OF NONIMMIGRATION PETITION.

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

APPROVAL OF AN IMMIGRANT PETITION.

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I-485, *Application to Register Permanent Residence or Adjust Status.*

UNITED STATES GOVERNMENT

Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE February 18, 2005
CASE TYPE N400 Application For Naturalization			INS # A-037 381 740
APPLICATION NUMBER IIN#000718381	RECEIVED DATE October 20, 2004	PRIORITY DATE October 20, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS HUSAM AMIN HAJ HASAN c/o VIVIAN R KHALAF AZULAY HORN & SEIDEN LLC 10005 S ROBERTS RD PALOS HILLS IL 60465 ilh@azulay.com			
Please come to: CHICAGO CUSA OFFICE 536 S. CLARK- 3RD FLOOR CITIZENSHIP OFFICE FIRST FLOOR CHICAGO IL 60605 On (Date): Monday, March 28, 2005 At (Time): 09:05 AM			
<p>You are hereby notified to appear for an interview on your application for Naturalization at the date, time and place indicated above. Waiting room capacity is limited. Please do not arrive more than 30 minutes before your scheduled appointment. If you are unable to attend the interview, you must appear in writing at the office to cancel your appointment and return your interview letter immediately to the INS office address listed above with your application and a request for a new appointment; otherwise, no further action will be taken on your application.</p> <p>If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically-determinable disability (you must have filed Form I-688, Medical Certification for Disability Exception, with your N400 Application for Naturalization).</p> <p>You MUST BRING the following with you to the interview:</p> <ul style="list-style-type: none"> • This letter. • Your Alien Registration Card (green card). • An active Selective Service Registration. • Your passport and/or any other document(s) establishing connection with the country of your birth. • Those items noted below which are applicable to you. <p>If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen:</p> <ul style="list-style-type: none"> • Your marriage certificate. • Proof of death or divorce for each prior marriage of yourself or spouse. <p>If applying for NATURALIZATION AS A MEMBER of the United States Armed Forces:</p> <ul style="list-style-type: none"> • Your discharge certificate, or form DD 214. <p>If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.</p> <p>PLEASE keep this appointment, even if you do not have all the items indicated above.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE CITIZENSHIP OFFICE 536 SOUTH LA SALLE CHICAGO IL 60605</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>REPRESENTATIVE COPY</p>			

- *Please save this notice for your records. Please enclose a copy if you have to write us or a U. S. Consulate about this case, or if you file another application based on this decision.*
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Department of Homeland Security
U.S. Citizenship and Immigration Services

Exhibit D

N-652, Naturalization Interview ResultsA#: 37381740On 3/28/05, you were interviewed by USCIS officer S70701

You passed the tests of English and U.S. history and government.

You passed the tests of U.S. history and government and the English language requirement was waived.

USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.

You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write _____ English.

You will be given another opportunity to be tested on your knowledge of U.S. history and government.

Please follow the instructions on Form N-14.

USCIS will send you a written decision about your application.

You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) A decision cannot yet be made about your application.

It is very important that you:

Notify USCIS if you change your address

Come to any scheduled interview.

Submit all requested documents.

Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.

Go to any Oath Ceremony that you are scheduled to attend.

Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.



**U.S. Citizenship
and Immigration
Services**

NOTE TO APPLICANTS REGARDING NATIONAL SECURITY CHECKS

A final decision cannot be made on any application for naturalization or adjustment of status to permanent resident until national security checks are complete and the local USCIS office receives a response.

National security checks are performed by federal agencies other than the United States Citizenship and Immigration Services (USCIS). Your local USCIS office has no control over the pace of completion of these required checks.

At any given time, there are many hundreds of this office's cases pending due to national security checks. A significant portion of these checks takes more than six months to complete. At the USCIS Chicago District Office, cases with pending security checks are queried every week to ensure that those whose checks have cleared are acted on in a timely manner.

The USCIS Chicago District Office requests that you wait at least 120 days from the date of your interview before making an inquiry regarding the status of your case, if you have been advised at your interview that your security check (or name check) is pending. Your cooperation helps us to use office personnel more efficiently to complete your case and others that are pending.

USCIS thanks you for your patience and understanding in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Comfort".

Michael M. Comfort
District Director